

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ARTHUR BROWAND,  
Petitioner,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,  
Respondent.

No. 2:21-cv-00184-JAM-EFB P

ORDER

Petitioner is a state prisoner proceeding without counsel in this petition for a writ of habeas corpus brought under 28 U.S.C. § 2254. His second amended petition was filed on January 5, 2022 and is before the court for screening. 28 U.S.C. § 1915A(b)(1), (2); Rule 4, Rules Governing § 2254 Cases in the District Courts.

**I. Background**

On August 26, 2021, the court issued findings and recommendations recommending that the court grant respondent's motion to dismiss the original petition because it included unexhausted claims. ECF No. 17. The District Judge adopted that recommendation on October 14, 2020, allowing petitioner leave to file an amended petition containing only exhausted claims. ECF No. 19. Petitioner filed an amended petition on November 10, 2021, but the court found that petitioner had not included sufficient factual allegations therein and allowed petitioner additional

1 time to file another amended petition that included supporting facts. ECF Nos. 21, 22. Petitioner  
2 has filed a second amended petition. ECF No. 23.

3 **II. Analysis**

4 A judge “entertaining an application for a writ of habeas corpus shall forthwith award the  
5 writ or issue an order directing the respondent to show cause why the writ should not be granted,  
6 unless it appears from the application that the applicant or person detained is not entitled thereto.”  
7 28 U.S.C. § 2243.

8 Petitioner has complied with the court’s prior order. His second amended petition is  
9 complete within itself. It contains only petitioner’s exhausted claims and includes factual  
10 allegations supporting those claims. Further, it is not apparent from the face of the petition that  
11 petitioner is not entitled to relief.

12 **III. Order**

13 Accordingly, it is hereby ordered that:

- 14 1. Respondent shall file and serve either an answer or a motion in response to petitioner’s  
15 application within 60 days from the date of this order. *See* Rule 4, Fed. R. Governing  
16 § 2254 Cases. Any response shall be accompanied by any and all transcripts or other  
17 documents relevant to the determination of the issues presented in the application that  
18 have not already been filed in this action. *See* Rules 4, 5, Fed. R. Governing § 2254  
19 Cases;
- 20 2. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an  
21 answer;
- 22 3. If the response to petitioner’s application is a motion, petitioner’s opposition or  
23 statement of non-opposition shall be filed and served within 30 days of service of the  
24 motion, and respondents’ reply, if any, shall be filed within 14 days thereafter; and

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4. Petitioner has indicated a wish to stay this action while he exhausts his other claims in the California Supreme Court. *See* ECF No. 18. Having successfully filed an amended petition that contains only exhausted claims, petitioner may file a motion to stay the case if he so desires.

Dated: February 21, 2022.

  
EDMUND F. BRENNAN

EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE